

IN THE SENATE OF THE UNITED STATES.

MAY 26, 1858.—Ordered to be printed.

Mr. BENJAMIN made the following

**REPORT.**

[To accompany Bill S. No. 410.]

*The Committee on Private Land Claims, to whom was referred the memorial of the city of New Orleans, asking confirmation of title to one-half of certain lands devised by John McDonough to that city, as tenant, in common with the city of Baltimore, report:*

The lands represented in the memorial are situate in that part of the State of Louisiana which lies east of the Mississippi and Iberville rivers, and the lakes Maurepas and Pontchartrain, and are known as The Florida Parishes of Louisiana.

These parishes were not within the present State of Louisiana when it was admitted into the Union, but were cut off from "the adjacent territory occupied by the United States," otherwise known as West Florida, and added to Louisiana by act of Congress passed 14th April, 1812.

The original title to 223,333 acres of the lands described in the memorial was derived from the King of Spain by purchase from and payment made to Don Juan Ventura Morales, governor general of Louisiana and West Florida, in the months of October and November, 1803.

The title to 2,100 acres was derived from a settlement right in favor of Philip Robinson, acknowledged by the Spanish authorities to be a valid claim in 1804.

The title to 1,420 acres was derived from grant made by the Spanish authorities on the 5th March, 1806.

The titles thus set forth by the memorialists are unquestionably valid, if, at the date when they were acquired, it was within the power of the Spanish government to make sales or grants of land within the territory in which the lands claimed are situated; and this question, it is believed, is now, for the first time, presented for a decision by Congress since the treaty with Spain of the 22d February, 1819, by which the Floridas were acquired.

The examination of this question requires a reference to the history of the negotiations which accompanied not only that treaty, but the treaty of the 30th April, 1803, by which Louisiana was acquired from France. A thorough comprehension of the whole subject requires also a succinct statement of the condition of our relations with France and

Spain, so far as concerns our western and southwestern boundaries at the commencement of the present century.

At that period the American settlements had crossed the Alleghenies, and were rapidly spreading, not only upon the upper waters of the Mississippi, but upon those of the Mobile, the Chattahoochie, and other streams of west Florida. Spain possessed the outlets of these rivers, through which alone could the upper country communicate with the gulf, as well as the only eligible points at which the productions of this vast interior could be safely deposited for shipment. And Mr. Madison, then Secretary of State, wrote to Mr. Pinckney, our minister at Madrid, on the 30th of March, 1802, that the inhabitants complained that the treaty with Spain "had omitted to provide for the use of the Mobile, Chattahoochie, and other rivers running from our territory through that of Spain."—(2 American State Papers, Foreign Relations, 515.)

With a frontier population coming, for the first time, in contact with a race whose language and institutions—civil, social, and religious—differed from their own, it was not surprising that the tendency to border disturbances was greatly increased, and that the enforcement of federal law over a distant and unsettled region became a delicate and difficult duty.

At this juncture the wanton suppression of the right of deposit upon the island of New Orleans, by the governor of Louisiana, without the assignment of any other place for that purpose, as guarantied to the American people by convention, occasioned the highest national excitement. By that act, "agricultural productions," says the historian,\* "suddenly lost half their value as well at New Orleans as at Natchez." "Already the cry of alarm was heard, not only in the States of Ohio, Tennessee, and Kentucky, but even in all the old States."

In addition to this source of irritation, the government had been for some years on the eve of a rupture with France and Spain by reason of spoliations on our commerce. These with other political considerations of great weight, rendered it incumbent on the administration to make an energetic attempt to settle all pending causes of difficulty, by the acquisition of rights of navigation in the waters of all the southwestern streams, and even, if possible, the purchase of the Floridas and of New Orleans. To this purpose were the original negotiations limited, and so important was it deemed that the most eminent of our statesmen were selected for its accomplishment. President Jefferson selected Mr. King for the embassy to London, Mr. Livingston to France, and Mr. Pinckney to Spain; whilst at home the instructions were prepared under his auspices by Mr. Madison. To this accomplished corps, Mr. Jefferson added the experience of Mr. Monroe, soliciting him, by an autograph letter, to visit Paris as minister plenipotentiary, to aid in relieving the government from the embarrassments which complicated its foreign relations and threatened a disturbance of its peace.

That the original negotiations were limited to the acquisition of New

Orleans, and the Floridas, particularly West Florida, will be apparent by reference to the instructions of Mr Madison, of 9th June and 28th September, 1801, (2 For. Rel., 510;) and it further appears, from the same and subsequent instructions, that the government of the United States was then ignorant of the secret cession by Spain to France, although rumors of such cession had already began to circulate in the public papers.

The negotiations were unsuccessful. Mr. Livingston despaired. On the 1st September, 1802, he wrote to the Secretary of State: "There never was a government in which less can be done by negotiation than here. There is no people, no legislature, no counsellors. One man is everything. He seldom asks advice, never hears it unasked. His ministers are mere clerks, and his legislature and counsellors parade officers."

It was after the date of this letter that Mr. Monroe was sent to Paris, with instructions "to procure the cession of *New Orleans and the Floridas* to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana."—Letter of 18th January, 1803.—(2 For. Rel., 529.)

On the 11th April, 1803, Mr. Livingston writes: "Mr. Talleyrand asked me this day, when pressing the subject, whether we wished to have the *whole of Louisiana*. I told him no; that our wishes extended only to New Orleans and the Floridas."—(2 For. Rel., 552.) He also writes: "I have used every endeavor with the Spanish ambassador and Lord Whitworth to prevent the transfer (to France) of the Floridas."

Napoleon, however, pressed upon the American minister the acquisition of the entire province of Louisiana with such rapidity that, notwithstanding the distrust which seems at first to have been entertained by the latter, a treaty was matured and signed within a few days, and the most splendid acquisition ever made by a nation was thus suddenly and unexpectedly added to our domain.

The motives and reasons for this abrupt change of policy on the part of the French government are thus stated by the historian Marbois, who was a party to the negotiations, and whose truthfulness and integrity are well established.

On Easter Sunday, the 10th April, 1803, after having attended to the solemnities and ceremonies of the day, Napoleon called two ministers, who had been acquainted with the countries under consideration. Addressing them with that vehemence and passion which he particularly manifested in political affairs, he said: "I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I *have scarce recovered it when I must expect to lose it*. But if it escapes from me, it shall one day cost dearer to those who oblige me to strip myself of it, than to those to whom I wish to deliver it. The English have successively taken from France Canada, Cape Breton, Newfoundland, Nova Scotia, and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo. *They shall not have the Mississippi, which they covet*. Louisiana is nothing in comparison with their conquests in all parts of the

globe ; and yet the jealousy which they feel at the restoration of this colony to the sovereignty of France acquaints me with their wish to take possession of it, and it is thus that they will begin the war. They have twenty ships-of-war in the Gulf of Mexico. They sail over those seas as sovereigns, whilst our affairs in St. Domingo have been growing worse and worse every day since the death of Leclèxe. *The conquest of Louisiana would be easy, if they only took the trouble to make a descent there. I have not a moment to lose in putting it out of their reach. I know not whether they are not already there. It is their usual course, and if I had been in their place I would not have waited.* I wish, if there is still time, to take from them any idea that they may have of ever possessing that territory. I think of ceding it to the United States. *I can scarcely say that I cede it to them for it is not yet in our possession. If, however, I leave the least time to our enemies, I shall only transmit an empty title to those republicans whose friendship I seek.* They only ask of me one town in Louisiana ; but *I already consider the colony as entirely lost*, and it appears to me that in the hands of this growing power it will be more useful to the policy, and even to the commerce of France, than if I should attempt to keep it.”—(Marbois, 263-’4.)

The ministers called into council then discussed the policy of selling Louisiana. The discussions were, says the historian, “prolonged into the night. The ministers remained at St. Cloud, and at day-break he summoned the one who had advised the cession of Louisiana, and made him read the despatches which had just arrived from London. His ambassador informed him that naval and military preparations of every kind were making with extraordinary rapidity.”

Upon hearing this intelligence, Napoleon, after some remarks upon the commercial importance of certain military positions in the Levant, which England was supposed to desire, proceeded :

“Irresolution and deliberation are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede—it is the whole colony, without any reservation. I know the price of what I abandon ; and I have sufficiently proved the importance that I attach to the province, since my first diplomatic act with Spain for the recovery of it. I renounce it with the greatest regret. *To attempt obstinately to retain it would be folly.* I direct you to negotiate this affair with the envoys of the United States. *Do not even await the arrival of Mr. Monroe; have an interview this very day with Mr. Livingston;* but I require a great deal of money for this war, and I would not like to commence it with new contributions. For a hundred years France and Spain have been incurring expenses for improvements in Louisiana, for which its commerce has never indemnified them. Large sums which will never be returned to the treasury have been lent to companies and agriculturists. The price of all these things is justly due to us. If I should regulate my terms according to the value of these vast regions to the United States, the indemnity would have no limits. *I will be moderate, in consideration of the necessity in which I am of making a sale ;* but keep this to yourself. I want fifty millions, and for less than that sum I will not treat. I would rather



make a desperate attempt to keep these fine countries. To-morrow you shall have full powers."—(Marbois, 274-'5 )

A letter of the 29th July, 1803, from the Secretary of State, acknowledging to Mr. Livingston the receipt of his communication informing the government of the United States of this unexpected acquisition, says: "The object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not thought that more could be sought by the United States, either with a chance of success, or, perhaps, without being suspected of a greedy ambition, than the island of New Orleans and the two Floridas, it being little doubted that the latter was or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas the provision was, therefore, accommodated. Nor was it to be supposed that, in case the French government should be willing to part with more than the territory on one side of the Mississippi, our arrangement with Spain for restoring to her the territory on the other side would not be preferred to a sale of it to the United States." After stating that no expectations of success in the objects of the French mission had been entertained, except from some such military necessity as had occurred, the Secretary adds: "It is just ground for mutual and general felicitation that it [the crisis relied on] has issued under your zealous exertions in the extensive acquisition beyond the Mississippi.

"With respect to the terms on which the acquisition was made, there can be no doubt *that the bargain will be regarded as, on the whole, highly advantageous.* The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed; and particularly if the two millions of dollars in cash, intended to reduce the price or hasten the delivery of possession, had been so applied, and the assumed payments to American claimants placed on the footing mentioned in the instructions. The unexpected weight of the draught now to be made on the treasury will be sensibly felt by it, and may possibly be important in regard to other important objects.

"*I can only add the wish of the President to learn from you the understanding which prevailed in the negotiations with respect to the boundaries of Louisiana; and more particularly the pretensions and proofs for carrying it to the river Perdido, or for including any lesser portion of West Florida.*"

To this question of Mr. Madison no reply seems to have been given; but the United States, from the date of the treaty, always persistently asserted that the cession of Louisiana carried with it the territory lying between the Mississippi and Perdido rivers, whilst Spain as persistently repelled this pretension, and the matter remained a subject of earnest and angry controversy between the two powers till their dispute was finally settled by the treaty of 1819, whereby Spain ceded the Floridas to the United States.

The titles to the lands now claimed by the memorialists lie within this disputed territory; and although their validity might, in the opinion of the committee, be conclusively established without reference to the merits of the controversy just mentioned, the committee feel it to be their duty to investigate and report on this element of the title

of the memorialists, as it is one which they earnestly urge in support of their pretensions.

The description of Louisiana, as ceded by France, is given in the treaty of 1803, in the first article, in these words:

“Whereas, by the article the third of the treaty concluded at St. Ildefonso the 1st of October, 1800, between the First Consul of the French republic and his Catholic Majesty, it was agreed as follows: ‘His Catholic Majesty promises and engages, on his part, to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, *with the same extent that it now has in the hands of Spain and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States;*’ and whereas, in pursuance of the treaty and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory, the First Consul of the French republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States, in the name of the French republic, forever and in full sovereignty, *the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic, in virtue of the above mentioned treaty concluded with his Catholic Majesty.*”

It is obvious, from the very terms of this treaty, that the description of the boundaries was studiously omitted, and that France simply stipulated to convey whatever she had acquired from Spain. It becomes, then, quite interesting to ascertain, if possible, the reasons why so important an element of the treaty as a precise designation of the boundaries of the ceded territory was carefully excluded. Let us, for this purpose, compare the statements made by the diplomatists who negotiated the convention.

Mr. Livingston, in his despatches, frequently recurs to this subject.

In his despatch of the 5th February, 1803, he says: “The Floridas not yet ceded (to France,) owing, I believe, to some difficulty about Parma. \* \* \* Spain is, however, prepared to make the cession, and I presume it will be done.”—(2 For. Rel., 532.)

On the 18th February, 1803: “I have proposed to them the relinquishment of New Orleans, and *West Florida as far as the river Perdido.* \* \* \* The essential fact is that *the Floridas are not yet ceded*”—i. e., by Spain to France.—(Page 533.)

On the 3d March, 1803: “The Floridas are still in the hands of Spain.”—(Page 538.)

On the 11th March, 1803: “If, as I begin to believe, they (the French) do not get the Floridas, they will put the less value on New Orleans.”

On the 11th April, 1803, “I endeavored to convince the government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; *that Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made;* that, without the Floridas, Louisiana

would be indefensible \* \* \* I have used every exertion with the Spanish ambassador and Lord Whitworth *to prevent the transfer of the Floridas.*”—(Page 552.)

On the 13th April, 1803, in speaking of the negotiations with Mr. Marbois, whose character for integrity, he says, is established, after mentioning the sum spoken of for the purchase of Louisiana, he adds: “I asked him, in case of a purchase, whether they would stipulate *that France would never possess the Floridas, and that she would aid us to procure them,* and relinquish all right she might have to them? He told me that she would go thus far.”—(Page 553.)

On the 12th May, 1803: “I am satisfied that, from this period, they had determined to let us have New Orleans, and the territory above the Arkansas, in exchange for certain commercial advantages; *and that if they could have concluded with Spain, we should also have had West Florida.*”—(Page 558.)

On the 12th May, 1803, he writes in relation to the colonization of Louisiana, that, on his arrival in France, it was a favorite project with the First Consul; “nor would any of them hear of disposing of it by sale; yet so ignorant were they of the nature of their acquisition that they never once suspected **THE FLORIDAS WERE NOT INCLUDED IN THEIR TREATY,** *till they were convinced of the contrary by the inquiries they set on foot in consequence of MY INFORMATION.*”—(Page 557.)

Comment on these passages would be superfluous. The evidence is irrefragable that the American minister had not the least idea that, in purchasing Louisiana, he was acquiring West Florida, within whose limits are situated the lands claimed by the memorialists.

The French diplomatist states, in his history, that the American negotiators at first insisted on a definition of boundaries, which they connected with the idea of a guarantee on the part of France; but there was some difficulty about the precise limit between Louisiana and Florida then pending with Spain, and Mr. Marbois said:

“The circumstances are too pressing to permit us to concert matters on this subject with the Court of Madrid. It would be too long before the discussion could be terminated, and perhaps that government would wish to consult the viceroy of Mexico. Is it not better for the United States to abide by a general stipulation, and, since these territories are still, at this day, for the most part, in the possession of the Indians, await further arrangements, or leave the matter for the treaty stipulations that the United States may make with them and Spain? In granting Canada to the English at the peace of 1763, we only extended the cession to the country that we possessed. It is, however, as a consequence of that treaty, that England has occupied territory to the west as far as the great Northern ocean.

“Whether,” continues the historian, “the American plenipotentiaries had themselves desired what was proposed, or that their words afforded them a ray of light, they declared that they kept to the terms of the third article of the treaty of St. Ildefonso, which was inserted entire in the first article of the treaty of cession.”

M. Marbois, who offered the draught, said several times: “*The first article may, in time, give rise to difficulties; they are at this day insur-*

*mountable; but if they do not stop you, I, at least, desire that your government should know that you have been warned of them."*

The French negotiator, on rendering an account to the First Consul, pointed out to him the obscurity of this article and the inconvenience of so uncertain a stipulation. He replied, that if an obscurity did not already exist, it would, perhaps, be a good policy to put one there."—(Marbois, pp. 283-'4-'5-'6.)

Having thus referred to the statements of the two parties who negotiated the treaty, let us next turn to the evidence of the construction which was *originally* put by our government on its own rights under it. On the 29th July, 1803, Mr. Madison's despatch to Mr. Pinckney, at Madrid, opens a fresh negotiation with Spain for the acquisition of the two Floridas, with these words: "You will have learned, doubtless, from Paris that a treaty has been signed there, by which New Orleans and the rest of Louisiana is conveyed to the United States. THE FLORIDAS ARE NOT INCLUDED IN THE TREATY, *being, it appears, still held by Spain.*"—(2 For. Rel., p. 614.)

On the same day that is affixed as the date of the instructions to Mr. Pinckney, at Madrid, viz: July 29, 1803, more elaborate instructions were sent to Mr. Monroe, who had been directed to proceed to Spain and aid Mr. Pinckney in accomplishing the objects so earnestly sought by our government.

The following passages are extracted from these instructions.—(Am. State Papers, For. Rel., vol. 2, p. 626.)

"It is thought proper to observe to you that, although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, *the acquisition of the Floridas is still to be pursued*, especially as the crisis must be favorable to it." Again: "There is little ground for supposing that the maritime powers of Europe will complain of or be dissatisfied *with a cession of the two FLORIDAS* to the United States, more than with the late cession of Louisiana by Spain to France."

The terms of these instructions are too plain to permit a doubt of the construction placed by our government on its acquisition. We had acquired Louisiana, but neither of the *two Floridas*.

It appears that the first idea of a claim by our government to West Florida, as comprised in its purchase of Louisiana, originated with Mr. Livingston, whose letter of the 20th May, 1803, could not have reached Mr. Madison at the date when he issued his instructions of 29th July of the same year. This letter of Mr. Livingston, dated three weeks after the signature of the treaty, is sufficiently important to be transcribed in full.

"PARIS, May 20, 1803.

"DEAR SIR: The subject of this letter is too important to admit of delay, in case the treaties should have been any time in your hands; but as it has not yet been fully considered by Mr. Monroe, he thinks he cannot make it that of a joint letter until we have more fully discussed it, which we propose to do to-morrow or the next day. But as that will be too late for this conveyance, I throw out these hasty thoughts for your consideration. In the meantime you will consider



this rather as a private than a public letter, since it may or may not be made use of to promote such measures as, upon mature deliberation, the President shall think proper to adopt. I do not doubt, however, that Mr. Monroe will concur with me in opinion, after we have discussed the subject, and that we shall, by the next opportunity, write to you officially thereon.

“I informed you, long since, that on inquiring whether the Floridas were within the cession of Spain, I was told by Mr. Marbois that he was sure that Mobile was, but could not answer further. I believed his information incorrect, because I understood that Louisiana, as it then was, was made the object of the cession, and that since the possession of the Floridas by Britain they had changed their names. But the moment I saw the words of the treaty of Madrid, I had no doubt but it included all the country that France possessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted with Mr. Marbois, at the time we negotiated, that this would be considered within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right, was fairly to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana, as it formerly belonged to her, saving the rights of other powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana, as possessed by France, was bounded by the river Perdido, and that Mobile was the metropolis. For the facts relative to this, I refer you to Raynal, and to his maps. I have, also, seen maps here which put the matter out of dispute.

“I called this morning upon Mr. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but that he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to the prefect who was to take possession, or what orders had been given by Spain as to the boundaries in ceding it? He assured me that he did not know, but that he would make the inquiry and let me know. At four o'clock I called for Mr. Monroe, to take him to the minister of foreign affairs, but he was prevented from accompanying me. I asked the minister what were the east bounds of the territory ceded to us? He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said, according to the words of the treaty. But what did you mean to take? I do not know. Then you mean that we shall construe it in our own way? I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it.

“Now, sir, the sum of this business is, to recommend to you in the strongest terms, after having obtained the possession that the French commissary will give you, to insist upon this as a part of your right, *and to take possession at all events to the river Perdido.* I pledge my-

self that your right is good, and after the explanations that have been given here, you need apprehend nothing from a decisive measure. Your ministers here and at Madrid can support your claim, *and the time is peculiarly favorable to enable you to do it without the smallest risk at home.* It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it, and the war terminate favorably for her, she will not readily relinquish it. With this in your hand, East Florida will be of little moment, and may be yours whenever you please. *At all events, proclaim your right and take possession.*

"I am, sir, &c.,

"ROB. R. LIVINGSTON.

"HON. JAMES MADISON."

A similar communication was addressed to Mr. Pinckney, at Madrid, and reached him before the instructions issued by Mr. Madison, of 29th July, 1803; for on the 2d August, 1803, he informs Mr. Madison that he "had received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, *and that they considered the cession as including West Florida.*"—(2 For. Rel., 597.)

The effect of these communications of our ministers in France was speedily apparent, both in the conduct of our negotiations with Spain and in the action of our government at home. Instead of pursuing the instructions of the Secretary of State, and seeking to purchase the *two Floridas*, Mr. Pinckney asserted title to West Florida; and Congress, whilst it passed an act for the establishment of collection districts at New Orleans and Natchez, proceeded cautiously to test the feeling of Spain on the subject, by adding a section to the law, *authorizing* the President, "*whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river Mobile, and of the other rivers, creeks, inlets, and bays emptying into the Gulf of Mexico, east of the said river Mobile and west thereof to the Pascagoula, inclusive, into a separate district.*"—(Act 24th February, 1804.)

The pretensions of our minister were firmly and persistently resisted by Spain, whilst great offence was taken at the passage of the act just quoted, and Mr. Jefferson, in his message to Congress of 8th November, 1804, stated the result as follows:

"Soon after the passage of the act of the last session authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations were immediately given, and assurances that, *reserving our claims in that quarter as a subject of discussion and arrangement with Spain*, no act was meditated, in the meantime, inconsistent with the peace and friendship existing between the two nations."

This complaint had been made to our minister in Spain as soon as the news of the passage of the act reached that country; and Mr. Pinckney, on the 1st June, 1804, replying to the complaint, says that he has not yet received any information of the passage of the act, nor instructions on the subject, and recalls to the Spanish minister that he had made "a verbal communication of the contents of an official letter

he had received from Mr. Livingston and Mr. Monroe, that they considered *a great part of west Florida*, as so called by the English, included in the cession." He adds: "Such letter *could not have been written* to me by them officially without their having been so informed by the French plenipotentiary and government."

Relying on this inference, which we have already seen was erroneous, Mr. Pinckney informed the Spanish minister that he should appeal to the French government to support his view, and the Spanish government made a similar appeal to France.

The result was disastrous to the expectations so confidently entertained by Mr. Pinckney, and which were shared by Mr. Monroe, who made the appeal to France, in a letter dated at Paris, on the 8th of November, 1804.—(2 For. Rel., 634.)

M. Talleyrand made reply, on the 21st December, 1804, (p. 635,) as follows:

"France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to cede any other; and that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the treaty of St. Ildefonso, by which she had acquired that colony two years before.

"Now, it was stipulated in her treaty of the year 1801 that the acquisition of Louisiana by France was a *retrocession*; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day she ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this, Spain had received no part, and could therefore give none back to France.

"All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the 32d degree of north latitude, bears the name of Florida; it has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaties between Spain and the United States; and in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida, to that on the east of it.

"According to this designation thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi and the sea, this country ought, in good spirit and justice, to be distinguished from Louisiana.

"Your excellency knows that before the preliminaries of 1762, confirmed by the treaty of 1763, the French possessions situated near the Mississippi extended as far from the east of this river as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile, as to the territory near to the north on the same bank of the river, which formerly belonged to France.

"These observations, sir, will be sufficient to dispel every kind of doubt with regard to the extent of the retrocession, made by Spain to

France, in the month of Vendemiare, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before his imperial Majesty [Napoleon] the negotiations of Madrid, which preceded the treaty of 1801, and *his Majesty is convinced that during the whole course of these negotiations the Spanish government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.*

“His imperial Majesty has, moreover, authorized me to declare to you, that, at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi.”—(Am. State Papers, vol. 3, p. 635.)

A similar reply was given to the Spanish government on the 5th Germinal, year 13, (26th March, 1805.)—(2 For. Rel., 659.)

The pretensions of Spain, thus maintained, were never abandoned, nor has there ever been any determination as to their validity. The committee is therefore forced, in the performance of its duty, to express an opinion upon the relative claims of the two countries to this disputed territory—an opinion which necessarily involves an inquiry into the extent of the rights acquired by France under the treaty of St. Ildefonso; for those, and those alone, were acquired by the United States according to the very words of the treaty of 1803.

Prior to the treaty of 1763 the pretensions of the different European powers which had colonized America were the sources of unceasing controversies, and not unfrequently of hostile collision. The pretensions of Spain dated back to the sixteenth century, and claimed to encircle the Gulf of Mexico from the capes of Yucatan to those of Florida. France, according to her grant to Crozat, claimed all the country between the confines of Mexico and the Carolinas, and the vast regions between the Pacific on the west and the colony of Virginia on the east; whilst English pretensions came into conflict with the claims of both those powers.

The treaty of 1763 made a final settlement of the respective pretensions of all the parties. It was agreed that the separation between France and England should be by “a line through the middle of the river Mississippi, from its source to the Iberville, and through the Iberville and the lakes Maurepas and Pontchartrain to the sea.” Consequently, England’s title was recognized to all the territory east of the Mississippi, except the island of New Orleans, and she thereby became the undisputed owner of the territory in which the lands now claimed by the memorialists are situated. From that date this territory was called, by historians and geographers, West Florida, and continued to be known as such to all the governments of Europe. Spain joined in the relinquishment of title, and guarantied to England, “Florida, with Fort St. Augustine, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America to the east or to the southeast of the river Mississippi.”



Under this treaty, England entered into possession of West Florida, proclaimed its boundaries, and held it as her own, without dispute or protest, until Spain, a party to the general war then raging both in Europe and America, conquered it by military force and held it in armed occupation till, in the definitive treaty of peace of 30th January, 1783, England retroceded to her East Florida, and confirmed her with guarantee in possession of *West Florida*. This fact was perfectly well known to the United States before the cession of Louisiana, and was recognized by treaty with Spain. In Mr. Madison's instructions to Messrs. Livingston and Monroe, on the 2d March, 1803, he says: "The islands within six leagues of the shore are the subject of a British proclamation in the year 1763, subsequent to the cession of the Floridas to Great Britain by France, which is not known to have ever been called in question by either France or Spain."—(2 For. Rel., 542.)

In the treaty between Spain and the United States, on the 27th October, 1795, the 2d article provides that "the southern boundary of the United States, which divides their territory from the *Spanish colonies of East and West Florida*, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east," &c. The 4th article of the same treaty declares that "the western boundary of the United States, which separates them from the *Spanish colony of Louisiana*, is in the middle of the channel or bed of the river Mississippi."

Numerous other articles in the same treaty designate with the same distinctive particularity the different provinces of Spain which lay contiguous with our territory; one, "*the Spanish colony of Louisiana*," bounded by the Mississippi river, but including the island of Orleans; the other, "*the Spanish colonies of East and West Florida, beginning on the river Mississippi*."

These different colonies, known by these distinct appellations to England, to France, to Spain, and to the United States, were in possession of Spain in the year 1800. Her title to the Floridas was derived from England under the treaty of 1783; her title to Louisiana was derived from France under a secret treaty, dated 3d November, 1762, in which it is described as "the whole country known by the name of Louisiana, together with New Orleans and the island on which the said city is situated." Spain, thus in possession of Louisiana and the two Floridas, with titles derived from different sources, and at different dates, on the 1st October, 1800, by treaty with France, agrees, six months after the full and entire execution of the conditions and stipulations relative to the Duke of Parma, "to retrocede\* to the French republic the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States."

\* The French word "*rétro-céder*" is erroneously translated "*cede*" in the English text of the treaty of 1803. As the treaty of 1800, between France and Spain, was in French, the French text must of course prevail.

It seems impossible to give two meanings to this stipulation. For more than a generation the lines of demarcation between Louisiana and the Floridas had been settled by a treaty, to which both the contracting powers had been parties. Louisiana and Florida were as distinctly known in 1800 as now in 1858. The contract on its very face professes to *give back*, to *retrocede*, to *return* to France what Spain had received from *France*. But the Floridas had been acquired from *England*. As if to place the matter beyond a possibility of doubt or even quibble, Louisiana is retroceded, such as it should be, "after the treaties *subsequently* entered into between Spain and other States." Those subsequent treaties have already been cited; they were made, one with England in 1783, the other with the United States in 1795; and in both Louisiana is separated from the Floridas, as a distinct colony, whose eastern boundary is the Mississippi, with the solitary exception of the island of New Orleans.

The only argument ever offered by the United States against so plain a proposition was based on that clause of the description which speaks of Louisiana with the same extent "that it had when France possessed it." Our minister contended that, in order to satisfy this clause of the description, they had a right to go back behind the treaty of 1763, revive the claims of France as they existed before the settlement made in that treaty, and thus carry on pretensions eastward to the Perdido.

The committee cannot but conclude that these pretensions were wholly unfounded; that they were a mere afterthought has already been made apparent by the correspondence of our ministers. Our government knew, long before its acquisition of Louisiana, that the Floridas had not been transferred by Spain to France. Mr. Livingston's letters are constantly filled with statements of his efforts to prevent Spain from making a transfer. He states that the French were ignorant that the Floridas were *not* included in their purchase till he proved it to them; but whilst this assertion shows the knowledge of our government, it is apparent that Mr. Livingston had been deceived by the French diplomatist, for, in the letter of Mr. Talleyrand, we discover that in 1802 "General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas." It appears to your committee, on a careful review of the whole subject, that no candid mind can resist the conclusion that, however justifiable may have been the pretensions of our government, on the score of policy, and as an effect to the unjust encroachments of Spain in other quarters, and to her spoliation of our commerce, the territory of West Florida was not acquired by the cession from France in 1803, but was *de jure* an appanage of the Spanish crown. If this conclusion be correct, the titles of the memorialists are perfect, and ought to be confirmed.

But whether or not the foregoing views of the committee shall meet the concurrence of the Senate, no doubt exists of the fact that Spain was sovereign *de facto* of the disputed territory at the date of the sales and grants now under consideration. On this branch of the subject a short diversion will be useful, by way of episode, as explanatory of

the reasons why the treaty of St. Ildefonso was kept secret, and Spain left in possession of Louisiana until the cession to the United States.

By that singular document, France engaged to "*procure*" for his royal highness the Duke of Parma (who had married a Spanish princess) as much territory adjacent to that which he then held as should raise the number of his subjects to a million, and give him right to the title of king. France guarantied the assent of the various powers and States interested, and the occupation of the territory contemplated by the Duke of Parma, as soon as peace was confirmed between France and Austria.

The territory designated by the treaty is that of Tuscany, in case France should succeed in obtaining it from Austria under pending negotiations, or the three Roman Ecclesiastical provinces, or any other continental provinces of Italy that would "form a rounded estate."

Spain was to retrocede Louisiana six months after the full execution of these stipulations in favor of the Duke of Parma.

Napoleon complied partially with his engagements by establishing the Duke of Parma as King of Etruria; but Spain naturally entertained doubts of her own ability or that of the king to maintain possession of the conquered territory without some other guaranty than the pleasure of the conqueror; hence her tenacious adherence to her possession of Louisiana until guaranties of the permanence of the European equivalent were furnished; hence her protest against the acquisition of Louisiana by the United States, at first urgently maintained, but soon afterwards withdrawn under the influence of France.

Her distrust was not unfounded. Napoleon, within a short period, withdrew from the King of Etruria both his title and his possessions. The States of Parma and Placentia were incorporated as the 28th military department of France, and afterwards conveyed to the Empress Marie Louise and the prince, her son, in full property. Tuscany was added to France as the kingdom of Taro, and the King of Etruria transferred to the western coast of Europe, and made king of northern Lusitania. Thus Spain had been deprived of the equivalent stipulated for Louisiana, and Napoleon had sold it for seventy-five millions of francs. It is not very surprising that she should be dissatisfied with the arrangements thus made by the despotic chieftain of France, nor that she repulsed, with unyielding pertinacity, the American claim to extend the eastern boundary of Louisiana.

The nature of the treaty of St. Ildefonso was such as to make it imperative on the contracting powers to leave Spain as the ostensible owner of Louisiana, as its sovereign *de facto*, and as such to leave her with power to make valid sales of land in the territory east of the Mississippi, even if it were really included in the cession of Louisiana.

How could such a treaty be revealed without defeating its own objects? France was parcelling out provinces held by other powers. It was promising that kings and emperors should do its biddings. It was covenanting to make and unmake monarchs, and a bare suspicion of the terms of the compact would have united the whole continent in opposition to its execution.

At the same time it is to be observed that the treaty does not cede Louisiana to France *in presenti*. It promises a retrocession *in futuro*,

“six months after the full compliance with the stipulations in favor of the Duke of Parma.” Spain does not, by its terms, strip herself of one attribute of her sovereignty; no limitation is imposed on her power to sell and grant lands in the ceded territory, any more than on her power to administer justice or exercise any other right of eminent domain. She remains sovereign *de jure* as well as *de facto* until six months shall have elapsed after the compliance with the stipulations in favor of the Duke of Parma; after the lapse of those six months she will no longer be sovereign *de jure*, but she will remain so *de facto* till the delivery of possession, or, at all events, till notice shall be given of the existence of the treaty.

Hence it may readily be perceived why Mr. Marbois professed ignorance of the extent of the cession; why Talleyrand said that nothing had been positively done in regard to boundary; why Napoleon said that if obscurity did not already exist in the treaty with us, it would, perhaps, be good policy to create it.

Spain was thus left designedly in possession of Louisiana as sovereign *de facto* until its cession to the United States. Salcedo arrived in New Orleans in June, 1801, with a commission from the King of Spain, as governor of the provinces of Louisiana and West Florida, and his predecessor, the marquis of Casa-Calvo, sailed for Havana. It was not till the end of March, 1803, that Laussat arrived, as colonial prefect, appointed by France, and announced by proclamation that General Victor, who had been appointed captain general of the colony, would arrive towards the middle of April. On the 18th May, Salcedo and Casa-Calvo, (the latter having returned from Havana for the purpose,) issued their proclamation as commissioners appointed to deliver Louisiana to France. In this proclamation it was stated “*that the limits on both sides of the river Mississippi should continue as they remained by the 5th article of the definitive treaty of peace, concluded at Paris on the 10th December, 1763; and accordingly the settlements from the bayou Manchac, as far as the line which separated the dominions of Spain and those of the United States, should remain a part of the monarchy of Spain, and be annexed to the province of West Florida.*” No objection was made by the French prefect, and the historian, Judge Martin, continues:

“Everything seemed now ready, and the arrival of Victor, the commissioner of France for receiving possession was hourly expected; every one had his tri-colored cockade ready to be stuck on his hat as soon as the Spanish flag was lowered and the French hoisted, when a vessel from Bordeaux brought accounts of the sale of the province by Bonaparte to the United States.”—(2 Martin’s His. La., 189, 190.)

On the 31st October, 1803, Congress authorized the President to take possession of the territory. The President appointed Governor Claiborne and General Wilkinson. Napoleon appointed Laussat commissioner, in lieu of Victor, to receive possession from Spain and deliver it to the United States; and on Wednesday, the 30th November, 1803, Laussat having exhibited to Salcedo an order from the King of Spain for the delivery of the province, the keys of New Orleans were delivered to Laussat, the Spanish colors hauled down, and those of France displayed in their place. On Monday, the 20th De-



cember, 1803, possession was in like manner delivered by Laussat to the American ministers, who had arrived a few days before.

The delivery of possession being thus confined to the Iberville on the east, both by Spain to France, and by the latter to the United States, Spain remained in possession of the country between the Iberville and Perdido as its sovereign *de facto*, and with claim of sovereignty *de jure*, until long after the sales and grants of the lands now claimed by the memorialists.

The memorialists state that the United States acknowledged this actual possession and occupancy of West Florida by Spain in every manner in which such an acknowledgment could be made; "that they paid duties at Mobile and Pensacola in the Spanish custom-houses for their own goods sent by government itself to their troops in Alabama and Georgia, and that in the year 1812, even after Congress had annexed West Florida to the contiguous territory, a vessel was libelled in the United States court, in Alabama, because she came from Mobile, then in possession of Spain, to Fort Stoddard, contrary to the provision of the embargo laws. She was acquitted, and the Secretary of the Treasury ordered an appeal, because Mobile was in possession of Spain, and a foreign port."

If, however, any further evidence were required to prove the continued occupation of West Florida by Spain as sovereign *de facto*, with the acquiescence of the United States, the history of the year 1810 puts the fact beyond controversy.

In the summer of that year, a number of the inhabitants of west Florida marched, of their own authority, on Baton Rouge; captured the fort, then in possession of Spain; *declared their independence*; framed a constitution, and elected Fulivar Skipwith governor.

In their declaration of independence they attest the loyalty with which they have served their king and preserved his territory for him, and give their reasons for declaring their independence. They then sent a communication to the President, asking to be annexed to the Union. On the receipt of this communication, the President issued a proclamation, in which he declared that the United States had always considered the territory in question as belonging to them; "*that the acquiescence of the United States in the temporary continuance of said territory under the authority of Spain was not the result of any distrust of their title,*" but was occasioned by conciliatory views; that "*acts of Congress, though contemplating a present possession by a foreign authority, have contemplated also an eventual possession by the United States,*" and he therefore authorized Governor Claiborne to take possession of the territory. The proclamation added, that the territory "*in the hands of the United States will not cease to be the subject of a fair and friendly negotiation and adjustment.*"—(3 Foreign Relations, 397.)

Under this state of facts, your committee think it would be a violation of every principle of justice and national law to confiscate titles acquired from Spain by her own subjects, in territory possessed by her *de facto*, with the acquiescence of the United States, and claimed by her as being hers *de jure*. How could it be expected that her own subjects should doubt or question her right to convey the soil under

circumstances like those just narrated? No case has ever come before the notice of the committee which more imperatively demands the application of the principle sanctioned by the law of nations, that private individuals may safely deal with the sovereign *de facto*, and that their rights are not affected by any subsequent determination that the sovereignty *de jure* is in another power.

Chancellor Kent says: "The national character of the place agreed to be surrendered by treaty continues, as it was, under the character of the ceding country, until it be actually transferred. Full sovereignty cannot be held to have passed by the mere words of the treaty, *without actual delivery*. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence."—(1 Kent, 177.)

In treating of this very disputed territory, the Supreme Court of the United States said, in *De la Croix vs. Chamberlain*, 12 Wheaton, 600: "The United States have never, as far as we can discover, distinguished between the concessions of land made by the Spanish authorities whilst Spain was in the actual possession of it, from concessions of a similar character made by Spain within the acknowledged limits."

In *Rhode Island vs. Massachusetts*, 12 Peters, 749, the same court says: "Grants by a government *de facto* of parts of a disputed territory in its possession are valid against the State which had the right."

The committee, therefore, conclude that even if the United States had the right to the disputed territory, the grants in question made by the sovereign in possession were valid, and conveyed a perfect title to the grantees.

Whatever may be thought, however, of the positions heretofore assumed by the committee, there remains a third ground in which the memorialists assuredly may rest their claims with entire security.

They are protected by the faith of treaties.

On the 22d February, 1819, the long pending controversy was closed. In the second article of the treaty made on that day "his Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of *East and West Florida*."

ARTICLE 8. "All the grants of land made before the 24th January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories, ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands to the same extent that the same grants would be valid if the territories had REMAINED under the DOMINION of his Catholic Majesty. \* \* \* All grants made since the said 24th January, 1818, when the first proposal on the part of his Catholic Majesty for the cession of the *Floridas* was made, are hereby declared and agreed to be null and void."

It will naturally excite surprise that, in the face of such a treaty stipulations the rights of the memorialists should require any action on the part of the government. What higher title, it may be asked, can the memorialists desire than a treaty title, one which the Constitution of the United States declares to be equal in dignity to the supreme law of

the land? The answer to so natural an inquiry will soon present itself in the progress of this report; but, in the meantime, the committee deems it proper to present some extracts from the negotiations in relation to this clause, which will render palpable its true intent.

From the period when our government first put forward its pretensions over the disputed territory, it had been solicitous to prevent the value of its alleged acquisition to be impaired by any grant of the soil; and this policy found expression in the 14th section of the act of 26th March, 1804, declaring "all grants for lands within the territories ceded by the French republic to the United States by the treaty of 30th April, 1803, the title whereof was, *at the date of the treaty of St. Ildefonso*, in the crown government or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby, declared to be, and to have been from the beginning, *null, void, and of no effect in law or equity.*"

The committee cannot refrain from interrupting, for a moment, the thread of their argument for the purpose of a passing comment on the monstrous injustice to private rights, apparent on the very face of this law which confiscated, or attempted to confiscate, titles acquired in good faith, at any date after the 31st October, 1800, regardless of the fact that, by the very terms of the treaty of St. Ildefonso, made on that day, Spain did not cede her rights over Louisiana, but only promised to cede them at a future date, viz: six months after certain conditions should be accomplished, and regardless of the further fact that even this promise of cession was carefully kept secret from the whole world, so as to render it impossible for the grantee even to suspect that the power in possession of the territory *de facto* had parted, or promised to part, with any of its rights of eminent domain; but the committee forbear to enlarge on the subject, because it does not bear on the precise point now under consideration.

When negotiations, long interrupted, were renewed in 1818 between John Quincy Adams and the Chevalier de Onis, a proposition was made by the former for a settlement of all outstanding difficulties with Spain, including not only the eastern boundary, but the western boundary of Louisiana, and the claims of our citizens to indemnity for spoliation.

On the 16th January, 1818, his propositions were in these words:

"1. Spain to cede all her claims to territory eastward of the Mississippi.

"2 and 3. \* \* \* \*

"4. \* \* \* \* *No grants of land subsequent to the 11th August, 1802, to be valid.*"—(3 Am. State Papers, For. Rel., 464.)

On the 24th January, 1818, the Spanish minister answered: "Nor can I omit to declare to you, sir, that the pretension of annulling the grants of lands in Florida since August, 1802, would be *in opposition to all the principles of justice.* These grants are made in a lawful manner," &c., &c., &c.

Mr. Adams was put on his guard by a letter from Mr. Ewing, our

minister, dated at Madrid on the 10th February, 1818: "The king has lately made large grants of land in East Florida to several of his favorites, and I am credibly informed that within these few days he has, by a sweeping grant, given all the remainder to the Duke of Alagon, captain of his guards, and the Count of Punon Rostro, one of his chamberlains. This is, perhaps, his mode of preparing for a *cheap* cession of the territory to the United States."—(3 For. Rel., 509.)

On the 26th April, 1818, he again writes, that in reference to a cession of Florida, in compensation of American claims, he had told the Spanish minister that these claims would have to be paid out of the sale of the lands. "Now the king had lately given all those lands away, (as I had duly informed my government;) to complete the transaction it would, therefore, be absolutely necessary that the whole of those grants should be cancelled." And on 14th May, 1818, he announces, "the council sent orders to the Duke of Alagon and the Count of Punon Rostro, directing them not to make sales of the lands granted to them."—(3 For. Rel., pp. 511-'12.)

On the 18th July, 1818, Mr. Ewing says to Mr. Pizarro, the Spanish secretary of state, "that it is quite certain that the United States cannot receive Florida as indemnity for its reclamations, *if all the cessions to individuals since the date of the convention (1802) are not annulled.*"—(3 For. Rel., 516.)

Finally, the following were the propositions of the negotiators who concluded the treaty in Washington. The Chevalier Onis proposed, on 24th October, 1818, this clause:

"His Catholic Majesty \* \* \* \* to put an end to the differences which now exist between the two governments, cedes to them, (the United States,) in full property and sovereignty, the provinces of East and West Florida, with all their towns and forts. \* \* \* *The donations or sales of lands, made by the government of his Majesty, or by legal authorities, until this time, are nevertheless to be recognized as valid.*"—(3 For. Rel., 530.)

Mr. Adams answers, 31st October, 1818: "Neither can the United States recognize as valid all the grants of land until this time. \* \* It is well known to you, sir, that notice has been given by the minister of the United States in Spain to your government that *all the grants of land lately alleged to have been made by your government within those territories must be cancelled*, unless your government should provide some other adequate fund, from which the claims above referred to of the United States and their citizens may be satisfied."

Mr. Adams then proposes, "that all grants of land in any part of the territories to be ceded by Spain to the United States subsequent to the year 1802 are to be held null and void."—(Page 531.)

Don Onis replies, 16th November, 1818: "To this modification, in its absolute sense, I cannot assent, inasmuch as it is offensive to the dignity and imprescriptible rights of the crown of Spain, which, as the legitimate owner of *both the Floridas*, had a right to dispose of those lands as it pleased; and further, as the said modification would be productive of incalculable injury to the *bona fide* possessors who have acquired, settled, and improved those tracts of land.



"*The extent of what I can agree to is, that the late grants made by his Majesty in the Floridas, since the 24th January last, the date of my first note announcing his Majesty's willingness to cede them to the United States, shall be declared null and void.*" \* \* \*—(Page 532.)

Mr. Onis then submitted a draught of an article, and Mr. Adams a counter-draught, the article being No. 9 in the projet of a treaty by Mr. Onis, and No. 8 in the counter-projet of Mr. Adams.

*Mr. Onis—Article 9.*

All the grants of lands made by his Catholic Majesty, or by his legitimate authority, in the aforesaid two territories of Florida, and others which his Majesty cedes to the United States, shall be confirmed and acknowledged as valid, excepting those grants which may have been made after the 24th January of last year, the date that the first proposals were made for the cession of these provinces, which shall be held null, in consideration of the grantees not having complied with the conditions of the cession.

*Mr. Adams—Article 8.*

All grants of land made by or in the name of his Catholic Majesty in the aforesaid territories, after the 24th January, 1818, shall be null, the conditions of the said grants not having been performed by the grantees. *All grants made before that date by his Catholic Majesty, or by his legitimate authorities in the said territories, the conditions of which shall have been performed by the grantees, according to the tenor of the respective grants, and none other, shall be confirmed and acknowledged as valid.*

When Mr. Adams's counter-projet appeared, the Chevalier Onis said on this article that it could not be varied from what was contained in his projet, as the object of the last clause therein is merely to save the honor and dignity of the sovereignty of his Catholic Majesty; and on this objection, Mr. Adams agreed to the Chevalier's proposal, with the following explanation, "that all grants of land which shall not be annulled by this convention are valid to the same extent as they are binding on his Catholic Majesty."—(3 For. Rel., 619–20–21.)

By comparing these different projets, the words in italics in the counter-projet of Mr. Adams, and finally the words just quoted, the whole purpose of the clause is apparent. The United States were guarding themselves from any admission of the validity of such enormous *colonization* grants as were usually made by Spain, on condition of settlement and cultivation, of which they had recently been warned in the examples of the grants to the Duke of Alagon and Count of Punon Rostro. There was no danger as regarded *bona fide* sales or grants to settlers. Hence the requirement of Mr. Adams to insert words authorizing the United States to avail themselves of a non-compliance with conditions by grantees; hence his insertion of the provision that the titles should have the *same* validity against the United States as against Spain.

Before the ratification of the treaty, the United States, however, required of Spain a special acknowledgment of the nullity of the three principal grants made subsequent to the date indicated in the treaty, and it was accordingly ratified on the 24th October, 1820, with a

special declaration that the three grants made in favor of Alagon, Punon Rostro, and Vargas were not ratified by the treaty. Now, the grant to Vargas was of land *west of the Perdido river, in the disputed territory*, and the inference is irresistible that, in the opinion of the government, the title of Vargas would have been ratified by the treaty, unless excepted by special provision.

The question again recurs, how happens it that the memorialists require any action on the part of Congress to impart validity to grants thus recognized as perfect by the most solemn of all the public acts of a nation—a treaty duly ratified? The answer is to be found in the adjudications of the Supreme Court of the United States.

In the case of *Foster and Elam vs. Neilson*, 2 Peters, 396, which involved the title to a tract of land within this disputed territory, the Supreme Court held the following propositions to be sound in law, viz:

1st. That Congress having, by the act of 1804 and other acts, asserted title to this disputed territory under the treaty of cession of Louisiana, "it is the province of the court to conform its decisions to the will of the legislature;" the question being one of disputed boundary between nations, in which "it is scarcely possible that the court of either country should refuse to abide by the measures adopted by its own government."

2d. That as, by the treaty of 1819, the King of Spain had ceded to the United States "all the territories which *belong to him* to the eastward of the Mississippi, known by the name of East and West Florida," the court was *without power* to consider the disputed territory as included in this cession, because the United States had always claimed that this disputed territory did not "*belong to him*," and that the court was not authorized to question this claim, which was a *political* one, and did not present a *judicial* question.

3d. That the eighth article of the treaty did not *proprio vigore* confirm the titles embraced within its terms, but merely pledged the faith of the nation that Congress would confirm them.

In the case of the *United States vs. Arredondo*, 6 Peters, 691, the second of the above propositions was again affirmed, the court stating "that the settlement of boundaries was not a *judicial* but a *political* question; that it was not its duty to *lead* but to *follow* the action of the other departments of the government;" "*that, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the legislature.*"

But, in the same case, the court also held that, under the treaty of 1819, the cession to the United States was only of land not previously granted by the crown, (page 738,) and that private titles were confirmed by the words of the treaty itself, which excepted them from the general grant to the United States, in all other parts of Florida.

The third proposition of the court, in *Foster & Elam vs. Neilson*, was (after being shaken in *Arredondo's* case) deliberately overruled in *Percheman's* case, 7 Peters, 58. Finally, in the year 1850, an attempt was again made, in the case of the *United States vs. Reynes*, 9 Howard, 127, to induce the Supreme Court to take *judicial* cognizance of the titles of the unfortunate proprietors who had, half a century before, bought and paid for their lands within this disputed

country, from the sovereign who held it and claimed it as owner, and in whose possession the United States had *avowedly acquiesced* for *political reasons*. The court again said: "Whether, by the treaties of St. Ildefonso and of Paris, the territory south of the 31st degree of north latitude was ceded to the United States, is a question into which this court *will not now inquire*. The *legislative* and *executive* departments of the government have determined that the entire territory was so ceded. This court have solemnly and repeatedly declared that this was a matter peculiarly belonging to the cognizance of those departments, and that the propriety of their determination it was *not within the province of the judiciary to contravene or question*."

It thus appears that the memorialists by the action of the government are left without *even a chance of trying their title*. Congress passes acts referring them to the judiciary. The judiciary decides that it cannot examine the merits of their claim, because those merits depend on a *political* not a *judicial* question. Bandied backwards and forwards from one department of the government to the other, their rights have actually been sported with for fifty years. The violated faith of treaties calls aloud for redress. It is a scandal upon public justice that this state of things should endure a day longer. The whole case may be stated in a word. The United States, after years of dispute about a boundary with Spain, make a treaty by which Spain cedes her rights on the express condition that her grants shall be respected. And because she says she cedes the territory which *belongs to her*, the court holds that it is not at liberty to carry out the treaty until Congress will be pleased to say that the disputed territory *did belong to her*.

It is plain, from the language of the court in the cases cited, that the judges really thought Spain was right in the controversy. If they had thought our government right, it was very simple and easy to say so. The very excuse given for *not* deciding the merits shows whence the embarrassment of the court arose.

The committee will not assume to say that the court was wrong in declining to decide the cases submitted to it, according to the very plain meaning of the treaty, as expressed on its face and in the correspondence of the diplomatists who negotiated it; but they feel bound to say that there is no possible excuse for any further refusal by Congress to redeem the plighted faith of the nation.

The objects and purposes contemplated by the eminent statesmen who conducted our negotiations with France and Spain have long since been accomplished. The acquisitions which their sagacious foresight deemed so indispensable to the safety, progress, and prosperity of our country, have long since been secured. It is not for us to question the policy which urged so vigorously pretensions that, to say the least, were exceedingly doubtful.

If these great national purposes were still in jeopardy, if all their momentous consequences were still at hazard, a stern political necessity might excuse, if it could not justify, a pitiless sacrifice of individual rights. But that day has happily passed. Neither France nor Spain now hold a foot of soil on the North American continent. The battle

has been fought and won, and not even political expediency can now be pleaded in excuse for the confiscation of private rights.

Your committee report a bill for the relief of the memorialists, and include in it certain other claims referred to them which rest on the same principles as those involved in the claim of the memorialists.